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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,853	01/13/2004	Wolfram Langer	KRYO-00400	4610
28960	7590	09/14/2006		
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			EXAMINER MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,853

Applicant(s)

LANGER, WOLFRAM

Examiner

Jila M. Mohandes

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-9,19,20,22,24-27,38,40 and 42-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-9,19,20,22,24-27,38,40 and 42-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>04-24-06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 6-9, 19-20, 24-27, 38, 40 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner et al. (2,630,912). Warner '912 discloses an apparatus for resisting the growth and spread of contaminants, the apparatus comprising: a cosmetic brush including a handle portion (inasmuch as applicant has defined the cosmetic brush in the claims, the toothbrush 20 of Warner can also be construed as a cosmetic brush), wherein the handle portion is fashioned from a contaminant resistant material; at least one end cap (resilient cover 16) including an aperture (socket 18), wherein the aperture is fashioned to receive the handle portion of the brush; and an enclosure including at least one opening, wherein the at least one end cap is fashioned to close the at least one opening, and further wherein when the

handle portion of the brush is inserted into the aperture and the at least one end cap is inserted into the at least one opening, the brush in entirety within the enclosure and configured such that the brush is not in contact with an inner surface of the enclosure. See Figures 1-4 embodiments.

With respect to the material of the brush, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material of the handle portion of the brush, since it is well known in the art to make brush handles from plastic or stainless steel which are contaminant resistant material and therefore, it would have been within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 38, 40 and 42-45 are directed to the obvious method of producing the apparatus of Warner '912 as modified above.

4. Claims 1, 6-9, 19-20, 24-27, 38, 40 and 42-45 rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (2,177,504). Thompson '504 discloses an apparatus for resisting the growth and spread of contaminants, the apparatus comprising: a cosmetic brush (inasmuch as applicant has defined the cosmetic brush in the claims, the toothbrush 18 of Thompson can also be construed as a cosmetic brush) including a handle portion, wherein the handle portion is fashioned from a contaminant resistant material; at least one end cap (resilient cover 12) including an aperture (slot 26), wherein the aperture is fashioned to receive the handle portion of the brush; and an enclosure including at least one opening, wherein the at least one end cap is fashioned

to close the at least one opening, and further wherein when the handle portion of the brush is inserted into the aperture and the at least one end cap is inserted into the at least one opening, the brush in entirety within the enclosure and configured such that the brush is not in contact with an inner surface of the enclosure. See Figures 1-4 embodiments.

With respect to the material of the brush, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material of the handle portion of the brush, since it is well known in the art to make brush handles from plastic or stainless steel which are contaminant resistant material and therefore, it would have been within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 38, 40 and 42-45 are directed to the obvious method of producing the apparatus of Thompson '504 as modified above.

5. Claims 1, 3-4, 6-9, 19-20, 22, 24-27, 38, 40 and 42-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Couch et al. (5,992,617). Couch '617 discloses an apparatus for resisting the growth and spread of contaminants, the apparatus comprising: a cosmetic brush (inasmuch as applicant has defined the cosmetic brush in the claims, the brush of Couch can also be construed as a cosmetic brush) including a handle portion, wherein the handle portion is fashioned from a contaminant resistant material; at least one end cap (resilient cover 70 or 80) including an aperture (implement holding sleeve 74), wherein the aperture is fashioned to receive the handle

portion of the brush; and an enclosure including at least one opening, wherein the at least one end cap is fashioned to close the at least one opening, and further wherein when the handle portion of the brush is inserted into the aperture and the at least one end cap is inserted into the at least one opening, the brush in entirety within the enclosure and configured such that the brush is not in contact with an inner surface of the enclosure. See Figures 7-8 embodiments.

With respect to the material of the brush, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the material of the handle portion of the brush, since it is well known in the art to make brush handles from plastic or stainless steel which are contaminant resistant material and therefore, it would have been within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In *re Leshin*, 125 USPQ 416.

With respect to claims 3, 22 and 46, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the handle of the brush from an upper handle portion and a lower handle portion, since it has been held that constructing a formally integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

With respect to claims 4, 22 and 46 note the brush in figures 7 and 8 wherein a set of bristles are coupled to the upper handle portion of the brush with a crimp.

Claims 38, 40 and 42--45 are directed to the obvious method of producing the apparatus of Couch '617 as modified above.

Response to Arguments

6. Applicant's arguments filed 07/10/06 have been fully considered but they are not persuasive. Inasmuch as applicant has defined the cosmetic brush in the claims, the brush of the above references can also be construed as a cosmetic brush.

Contrary to applicant's argument the implement holding sleeve of the above references is configured such that the brush is not in contact with an inner surface of the enclosure

Conclusion


7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
September 11, 2006